

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

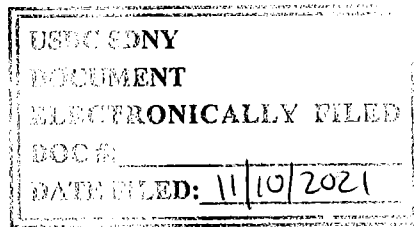
EDWIN MALDONADO,

Plaintiff,

-against-

OFFICER JOHN (FIRST NAME UNKNOWN)
GUNSETT, et al.,

Defendants.



21-CV-3719 (VB)

ORDER OF SERVICE

VINCENT L. BRICCETTI, United States District Judge:

Plaintiff, who is currently incarcerated in Attica Correctional Facility, brings this action under 42 U.S.C. § 1983, alleging that Defendants subjected him to sexual assaults, excessive force, and retaliation while he was confined at Green Haven Correctional Facility (Green Haven) in 2005 and 2018. By order dated June 21, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).¹

DISCUSSION

A. Service on the Named Defendants

Because Plaintiff has been granted permission to proceed IFP, Plaintiff is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that summonses and the complaint be served within

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the amended complaint until the Court reviewed the amended complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date summonses are issued. If the amended complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendants Correction Officer Gunsett, Sergeant Rowe, Correction Officer Miller, Sergeant Maligen, and Deputy Danielle Medbury through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each of these defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

B. Identification of the John and Jane Doe Defendant

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit the Attorney General of the State of New York to identify the John and Jane Doe correction officers at Green Haven who were involved in the alleged

incidents Plaintiff describes. It is therefore ordered that the Attorney General, who is the attorney for and agent of the NYSDOCS, must ascertain the identities of the following correction officers at Green Haven whom Plaintiff seeks to sue and the addresses where these defendants may be served: (1) John Doe Deputy of Security in 2005; (2) John Doe H-Block Officer # 1 in 2005; (3) John Doe H-Block Officer # 2 in 2005; (4) John Doe H-Block Officer # 3 in 2005; (5) John Doe H-Block Sergeant on February 1, 2005; (6) John Doe SHU Officer # 1 in 2005; (7) John Doe Sergeant in 2005; (8) Jane Doe J-Block Officer in 2018; (9) John Doe Disciplinary Office Lieutenant in 2018; (10) Jane Doe Disciplinary Office Officer on June 18, 2018; (11) John Doe Deputy of Security in 2018; (12) John Doe A-Block Escort Officer in 2018; and (13) John Doe G-Block Escort Officer in 2018. The Attorney General must provide this information to Plaintiff and the Court by January 10, 2022.

Within thirty days of receiving this information, Plaintiff must file a second amended complaint with the full names of the John and Jane Doe defendants. The second amended complaint will replace, not supplement, the original complaint. A second amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed a second amended complaint, the Court will screen the second amended complaint and, if necessary, issue an order directing the Clerk of Court to issue summonses, complete the USM-285 forms with the addresses for the named defendants, and deliver to the U.S. Marshals Service all documents necessary to effect service.

C. Local Civil Rule 33.2

Local Civil Rule 33.2, which requires defendants in certain types of prisoner cases to respond to specific, court-ordered discovery requests, applies to this action. Those discovery requests are available on the Court's website under "Forms" and are titled "Plaintiff's Local Civil

Rule 33.2 Interrogatories and Requests for Production of Documents.” Within 120 days of service of the complaint, Defendants must serve responses to these standard discovery requests. In the responses, Defendants must quote each request verbatim.²

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

The Clerk of Court is also directed to issue summonses, complete the USM-285 forms with the addresses for Correction Officer Gunsett, Sergeant Rowe, Correction Officer Miller, Sergeant Maligen, and Deputy Danielle Medbury, and deliver to the U.S. Marshals Service all documents necessary to effect service.

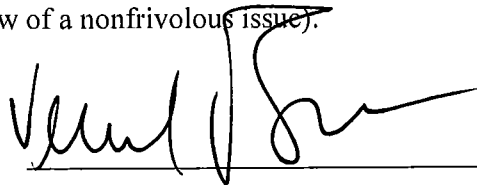
The Clerk of Court is further instructed to mail a copy of this order and the amended complaint to the Attorney General of the State of New York at: 28 Liberty Street, New York, NY 10005. A “Second Amended Complaint” form is attached to this order.

Local Civil Rule 33.2 applies to this action.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: November 10, 2021
White Plains, New York

A handwritten signature in black ink, appearing to read 'Vincent L. Briccetti', is written over a horizontal line.

VINCENT L. BRICCETTI
United States District Judge

² If Plaintiff would like copies of these discovery requests before receiving the responses and does not have access to the website, Plaintiff may request them from the Pro Se Intake Unit.

DEFENDANTS AND SERVICE ADDRESSES

1. Correction Officer Gunsett
Green Haven Correctional Facility
594 Route 216
Stormville, New York 12582-0010
2. Sergeant Rowe
Green Haven Correctional Facility
594 Route 216
Stormville, New York 12582-0010
3. Correction Officer Miller
Green Haven Correctional Facility
594 Route 216
Stormville, New York 12582-0010
4. Sergeant Maligen
Green Haven Correctional Facility
594 Route 216
Stormville, New York 12582-0010
5. Deputy Danielle Medbury
Office of Mental Health
Green Haven Correctional Facility
594 Route 216
Stormville, New York 12582

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

-against-

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

No. _____

(To be filled out by Clerk's Office)

**SECOND AMENDED
COMPLAINT**
(Prisoner)

Do you want a jury trial?

☐ Yes ☐ No

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "*Bivens*" action (against federal defendants).

☐ Violation of my federal constitutional rights

☐ Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name

Middle Initial

Last Name

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City

State

Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated _____		Plaintiff's Signature _____	
First Name _____	Middle Initial _____	Last Name _____	
Prison Address _____			
County, City _____	State _____	Zip Code _____	

Date on which I am delivering this complaint to prison authorities for mailing: _____